

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 17, 2003

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

AGENDA ITEM WORDING:

A public hearing to consider an amendment to Section 9.5-124 (NROGO) of the Land Development Regulations, adding a definition for covered walkways; adding regulations for covered outdoor non-residential floor area; prohibiting the NROGO exemption for not-for-profit organizations proposing non-residential development in areas proposed for acquisition by governmental agencies for the purpose of resource protection; modifying impact fees for non-residential floor area;

[one required public hearing]

ITEM BACKGROUND:

The NROGO Ordinance adopted on September 19, 2001 required all unenclosed but covered commercial space to be considered as commercial floor area. However, covered walkways were permitted without being included in the commercial floor area calculations. It is important that we define the limits of what may be considered a covered walkway.

Since there are a vast number of covered outdoor commercial spaces in the Keys, the Planning Commission was concerned that it would be possible to enclose those open spaces and transfer the existing area to another property free from the burden of receiving the required NROGO allocation. The proposed amendment seeks to address that issue.

Non-residential development by certain not-for-profit organizations is exempt from the NROGO allocation system (BOCC Resolution 346-2003 of August 20, 2003). This amendment proposes that the exemption should not be applicable to non-residential development proposed for acquisition by governmental agencies for the purpose of resource protection.

The change to the rates of the Employee Housing Fair Share Impact Fee (Sec. 9.5-124.9) was approved previously by the BOCC but not included in the final draft. This amendment will correct that error.

PREVIOUS REVELANT BOCC ACTION:

BOCC Resolution 346-2003 of August 20, 2003 directed staff to remove the exemption for development in designated Conservation and Natural Areas.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

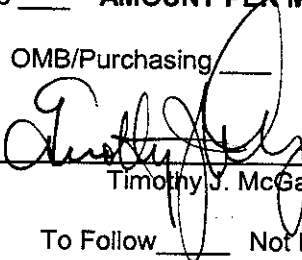
TOTAL COST: N/A **BUDGETED:** Yes N/A No ☐

COST TO COUNTY: N/A **SOURCE OF FUNDS:** N/A

REVENUE PRODUCING: Yes N/A No ☐ **AMOUNT PER MONTH** N/A **Year** ☐

APPROVED BY: County Atty X OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included X To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # T4

K n

AMENDMENT TO THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS

Board of County Commissioners
Marathon
December 17, 2003

PROPOSED AMENDMENTS TO MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN AND MONROE COUNTY LAND DEVELOPMENT REGULATIONS

A request filed by the Monroe County Department of Planning concerning amendments to Section 9.5-124 (NROGO), adding a definition for Covered walkways; adding regulations for covered outdoor non-residential floor area; prohibiting NROGO exemptions for not-for-profit development within areas proposed for acquisition by governmental agencies for the purpose of resource protection; modifying impact fees for non-residential floor area.

LDR Recommendations

Staff	Approval	October 1, 2003	Staff Report
DRC	Approval	October 2, 2003	Resolution #D34-03
PC	Approval	November 5, 2003	Resolution #P71-03

BOCC ORDINANCE

ORDINANCE _____-2003

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING THE REQUEST FILED BY THE MONROE COUNTY PLANNING DEPARTMENT TO AMEND SECTION 9.5-124 OF THE MONROE COUNTY CODE, (NROGO) BY ADDING A DEFINITION FOR "COVERED WALKWAYS"; ADDING REGULATIONS FOR COVERED OUTDOOR NON-RESIDENTIAL FLOOR AREA; PROHIBITING NROGO EXEMPTIONS FOR NOT-FOR-PROFIT DEVELOPMENT WITHIN AREAS PROPOSED FOR ACQUISITION BY GOVERNMENTAL AGENCIES FOR THE PURPOSE OF RESOURCE PROTECTION; MODIFYING IMPACT FEES FOR NON-RESIDENTIAL FLOOR AREA; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the NROGO Ordinance adopted on September 19, 2001 required all unenclosed but covered commercial space to be considered as commercial floor area; and

WHEREAS, covered walkways (protected walkways leading from one part of a property to another) were permitted without being included in the commercial floor area calculations;

WHEREAS, some applicants began to define covered commercial areas as walkways even though they were clearly proposed for outdoor commercial sales or outdoor dining; and

WHEREAS, It has therefore become necessary to define the limits of what may be considered a covered walkway; and

WHEREAS, there are a vast number of covered outdoor commercial spaces in the Keys; and

WHEREAS, the Planning Commission is concerned that it would be possible to enclose those open spaces and transfer the existing area to another property free from the burden of receiving the required NROGO allocation; and

WHEREAS, non-residential development by certain not-for-profit organizations is exempt from the NROGO allocation system; and

WHEREAS, this amendment proposes that the exemption should not be applicable to non-residential development within areas proposed for acquisition by governmental agencies for the purpose of resource protection; and

WHEREAS, the change to the rates of the Employee Housing Fair Share Impact Fee (Sec. 9.5-124.9) was approved previously by the BOCC but not included in the final draft and this amendment will correct that error; and

WHEREAS, the Board of County Commissioners finds that there is a need to make the changes in order to provide clear definitions, avoid confusion, and provide applicants with a clearer understanding of the NROGO Ordinance; and

WHEREAS, the Board of County Commissioners finds that the proposed change is consistent with Section 9.5-511(d)(5) b. (iv) New Issues and (V) Recognition of a need for additional detail or comprehensiveness; and

WHEREAS, the Board of County Commissioners finds that the proposed change is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan; and

WHEREAS, this proposed amendment was reviewed at the Development Review Committee public meeting of October 2, 2003; and

WHEREAS, this proposed amendment was reviewed at Planning Commission public hearings on October 22, 2003, and November 5, 2003, and

WHEREAS, the Board of County Commissioners, at the public hearing of December 17, 2003 reviewed the following:

1. Staff report prepared on November 18, 2003 by Fred Gross, Island Planning Team Director.
2. Proposed change to the Monroe County Land Development Regulations.
3. The sworn testimony of the Growth Management Staff.
4. The sworn testimony of residents of Monroe County.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

PROPOSED TEXT:

~~Strike-through text~~ is deleted

Underlined text is added

Section 1. Sec. 9.5-124. Non-Residential rate of growth ordinance (NROGO)

(b) Definitions:

Covered walkways means a covered area of any length but no wider than five (5) feet that is used for providing weather protected pedestrian access from one part of a property to another part of the same property.

Section 2. Sec. 9.5-124.2. Type of development affected.

(d) Enclosing of any canopies or drive-throughs in existence on or before September 19, 2001, the date of the adoption of NROGO Ordinance NO. 032-2001, shall require an NROGO allocation.

Section 3. Sec. 9.5-124.3 (a) Type of development not affected.

(4) Development activity for certain not-for-profit organizations: Non-residential development activity by federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations which predominately serve the county's permanent population if approved by the Planning Commission after review by the planning director. This not-for-profit exemption is not applicable to non-residential development proposed within those areas proposed for acquisition by governmental agencies for the purpose of resource protection. Non-residential development approved under this section may not be changed to a for-profit use without permit approvals and a NROGO application for and receipt of a floor area allocation.

Section 4. Sec. 9.5-124.9. Employee Housing Fair Share Impact Fee

(c) Establishment of Fee Schedule: An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

Structures for non-residential uses of one (1) to 2,000 1,999 square feet \$1.00 per square foot

Structures for non-residential uses ~~containing more than 2,000~~
of 2,000 to 2,999 square feet* \$2.00 per square foot

Structures for non-residential uses of 3,000 square feet or greater* \$3.00 per square foot

*The fee is calculated on the total new or transferred non-residential floor area subject to f. above.

Section 5. If any section, subsection, sentence, clause, item, change or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 6. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 7. The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapter 163 and 380, Florida Statutes.

Section 8. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission finding the amendment in compliance with Chapter 163, Florida Statutes.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, A.D., 2003.


Mayor Nelson
Mayor Pro Tem Rice
Commissioner McCoy
Commissioner Neugent
Commissioner Spehar

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT N. WOLFE
CHIEF ASSISTANT COUNTY ATTORNEY
Date 11-26-03

BOCC STAFF REPORT

MEMORANDUM

TO: Monroe County Board of County Commissioners

FROM: Fred Gross, Director, Lower Keys Island Planning Team

DATE: December 17, 2003

RE: Proposal to amend Section 9.5-124 (NROGO), adding a definition for Covered Walkways; adding regulations for covered outdoor non-residential floor area; prohibiting NROGO exemption for certain development proposed by not-for-profit organizations; modifying impact fees for non-residential floor area.

I. BACKGROUND

The NROGO Ordinance adopted on September 19, 2001 required all unenclosed but covered commercial space to be considered as commercial floor area. However, covered walkways were permitted without being included in the commercial floor area calculations.

During the past two years, some applicants began to define covered commercial areas as walkways even though they were clearly proposed for outdoor commercial sales or outdoor dining. It has therefore become important to define the limits of what may be considered a covered walkway. The definition being proposed is that a covered walkway is a covered area of any length but no wider than five (5) feet that is used for providing weather protected pedestrian access from one part of a property to another.

Since there are a vast number of covered outdoor commercial spaces in the Keys, the Planning Commission was concerned that it would be possible to enclose those open spaces and transfer the existing area to another property free from the burden of receiving the required NROGO allocation. The proposed amendment seeks to address that issue.

Non-residential development by certain not-for-profit organizations is exempt from the NROGO allocation system (BOCC Resolution 346-2003 of August 20, 2003). However, this amendment proposes that the exemption should not be applicable to non-residential development within areas proposed for acquisition by governmental agencies for the purpose of resource protection.

Finally, the change to the rates of the Employee Housing Fair Share Impact Fee (Sec. 9.5-124.9) was approved previously by the BOCC but not included in the final draft. This amendment will correct that error.

This proposed amendment was reviewed and approved at the Development Review Committee public meeting of October 2, 2003 and was reviewed and approved at planning commission public hearings on October 22, 2003, and November 5, 2003, and

II. ANALYSIS & FINDINGS OF FACT

1. The Planning Commission finds that there is a need to make the changes in order to provide clear definitions, avoid confusion, and provide applicants with a clearer understanding of the NROGO Ordinance.

2. The Planning Commission finds that the proposed change is consistent with Section 9.5-511(d)(5) b. (iv) New Issues and (V) Recognition of a need for additional detail or comprehensiveness.

3. The Planning Commission finds that the proposed change is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan.

III. PROPOSED TEXT

Strike-through text is deleted

Underlined text is added

Sec. 9.5-124. Non-residential rate of growth ordinance (NROGO).

(b) Definitions:

Conservation and Natural Areas means those significant upland hardwood hammocks and pinelands of four acres or more and adjacent buffer areas, the boundaries of which are described in maps attached to and part of Board of County Commissioners Resolution 346-2003, as amended.

Covered walkways means a covered area of any length but no wider than five (5) feet that is intended and constructed for providing weather protected pedestrian access from one part of a property to another part of the same property.

Sec. 9.5-124.2. Type of development affected.

(d) Enclosing of any canopies or drive-throughs in existence on or before September 19, 2001, the date of the adoption of NROGO Ordinance NO. 032-2001, shall require an NROGO allocation.

Sec. 9.5-124.3 (a) Type of development not affected.

- (4) *Development activity for certain not-for-profit organizations:* Non-residential development activity by federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations which predominately serve the county's permanent population if approved by the Planning Commission after review by the planning director. This not-for-profit exemption is not applicable to non-residential development proposed within those areas proposed for acquisition by governmental agencies for the purpose of resource protection. Non-residential development approved under this section may not be changed to a for-profit use without permit approvals and a NROGO application for and receipt of a floor area allocation.

Sec. 9.5-124.9. Employee Housing Fair Share Impact Fee

(c) *Establishment of Fee Schedule:* An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

Structures for non-residential uses of one (1) to 2,000 1,999 square feet \$1.00 per square foot

Structures for non-residential uses ~~containing more than 2,000~~
of 2,000 to 2,999 square feet* \$2.00 per square foot

Structures for non-residential uses of 3,000 square feet or greater* \$3.00 per square foot

*The fee is calculated on the total new or transferred non-residential floor area subject to f. above.

IV. RECOMMENDATIONS

Based on the Findings of Fact above, Planning Commissions recommends **APPROVAL** of the proposed amendment to Section 9.5-124 of the Monroe County Code.

PLANNING COMMISSION RESOLUTION

PLANNING COMMISSION RESOLUTION #P73-03

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL TO THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS OF THE REQUEST FILED BY THE MONROE COUNTY PLANNING DEPARTMENT TO AMEND SECTION 9.5-124 OF THE MONROE COUNTY CODE, (NROGO) BY ADDING A DEFINITION FOR "COVERED WALKWAYS"; ADDING REGULATIONS FOR COVERED OUTDOOR NON-RESIDENTIAL FLOOR AREA; MODIFYING IMPACT FEES FOR NON-RESIDENTIAL FLOOR AREA; AND PROHIBITING NROGO EXEMPTIONS FOR NOT-FOR-PROFIT DEVELOPMENT WITHIN DESIGNATED CONSERVATION AND NATURAL AREAS.

WHEREAS, the NROGO Ordinance adopted on September 19, 2001 required all unenclosed but covered commercial space to be considered as commercial floor area; and

WHEREAS, covered walkways (protected walkways leading from one part of a property to another) were permitted without being included in the commercial floor area calculations;

WHEREAS, some applicants began to define covered commercial areas as walkways even though they were clearly proposed for outdoor commercial sales or outdoor dining; and

WHEREAS, It has therefore become necessary to define the limits of what may be considered a covered walkway; and

WHEREAS, there are a vast number of covered outdoor commercial spaces in the Keys; and

WHEREAS, the Planning Commission is concerned that it would be possible to enclose those open spaces and transfer the existing area to another property free from the burden of receiving the required NROGO allocation; and

WHEREAS, non-residential development by certain not-for-profit organizations is exempt from the NROGO allocation system; and

WHEREAS, this amendment proposes that the exemption should not be applicable to non-residential development within designated Conservation and Natural Areas; and

WHEREAS, the change to the rates of the Employee Housing Fair Share Impact Fee (Sec. 9.5-124.9) was approved previously by the BOCC but not included in the final draft and this amendment will correct that error; and

WHEREAS, the Planning Commission finds that there is a need to make the changes in order to provide clear definitions, avoid confusion, and provide applicants with a clearer understanding of the NROGO Ordinance; and

WHEREAS, the Planning Commission finds that the proposed change is consistent with Section 9.5-511(d)(5) b. (iv) New Issues and (V) Recognition of a need for additional detail or comprehensiveness; and

WHEREAS, the Planning Commission finds that the proposed change is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan; and

WHEREAS, this proposed amendment was reviewed at the Development Review Committee public meeting of October 2, 2003; and

WHEREAS, this proposed amendment was reviewed at planning commission public hearings on October 22, 2003, and November 5, 2003, and

WHEREAS, the planning commission reviewed:

1. Staff report prepared on October 27, 2003 by Fred Gross, Island Planning Team Director.
2. Proposed change to the Monroe County Land Development Regulations.
3. The sworn testimony of the Growth Management Staff.
4. The sworn testimony of residents of Monroe County;

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF MONROE COUNTY, FLORIDA, that the preceding findings of fact support their decision to recommend **APPROVAL** to the Monroe County Board of County Commissioners of the following amendments to the text of the Monroe County Land Development Regulations as requested by the Monroe County Planning Department:

PROPOSED TEXT:

~~Strike-through text is deleted~~

Underlined text is added

Sec. 9.5-124. Non-Residential rate of growth ordinance (NROGO)

(b) Definitions:

Covered walkways means a covered area of any length but no wider than five (5) feet that is used for providing weather protected pedestrian access from one part of a property to another part of the same property.

Sec. 9.5-124.2. Type of development affected.

(d) Enclosing of any canopies or drive-throughs in existence on or before September 19, 2001, the date of the adoption of NROGO Ordinance NO. 032-2001, shall require an NROGO allocation.

Sec. 9.5-124.3 (a) Type of development not affected.

(4) Development activity for certain not-for-profit organizations: Non-residential development activity by federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations which predominately serve the county's permanent population if approved by the Planning Commission after review by the planning director. This not-for-profit exemption is not applicable to non-residential development proposed within designated Conservation and Natural Areas.

Sec. 9.5-124.9. Employee Housing Fair Share Impact Fee

(c) *Establishment of Fee Schedule:* An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

Structures for non-residential uses of one (1) to ~~2,000~~ 1,999 square feet \$1.00 per square foot

Structures for non-residential uses ~~containing more than 2,000~~
of 2,000 to 2,999 square feet* \$2.00 per square foot

Structures for non-residential uses of 3,000 square feet or greater* \$3.00 per square foot

*The fee is calculated on the total new or transferred non-residential floor area subject to f. above.

PASSED AND ADOPTED By the Planning Commission of Monroe County,
Florida at a regular meeting held on the 5th day of November, 2003.

Jerry Coleman, Chair
Denise Werling, Vice Chair
David C. Ritz, Commissioner
Giulio Margalli, Commissioner
Lynn C. Mapes, Commissioner

YES
YES
YES
YES
YES

PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

By _____
Lynn C. Mapes, Chair

Signed this _____ day of _____, 2003.

DEVELOPMENT REVIEW COMMITTEE RESOLUTION

DEVELOPMENT REVIEW COMMITTEE RESOLUTION #D32-03

A RESOLUTION BY THE MONROE COUNTY DEVELOPMENT REVIEW COMMITTEE RECOMMENDING APPROVAL TO THE MONROE COUNTY PLANNING COMMISSION OF THE REQUEST FILED BY THE MONROE COUNTY PLANNING DEPARTMENT TO AMEND SECTION 9.5-124 OF THE MONROE COUNTY CODE, (NROGO) BY ADDING A DEFINITION FOR "COVERED WALKWAYS"; ADDING REGULATIONS FOR COVERED OUTDOOR NON-RESIDENTIAL FLOOR AREA; MODIFYING IMPACT FEES FOR NON-RESIDENTIAL FLOOR AREA.

WHEREAS, the NROGO Ordinance adopted on September 19, 2001 required all unenclosed but covered commercial space to be considered as commercial floor area; and

WHEREAS, covered walkways (protected walkways leading from one part of a property to another) were permitted without being included in the commercial floor area calculations;

WHEREAS, some applicants began to define covered commercial areas as walkways even though they were clearly proposed for outdoor commercial sales or outdoor dining; and

WHEREAS, It has therefore become necessary to define the limits of what may be considered a covered walkway; and

WHEREAS, there are a vast number of covered outdoor commercial spaces in the Keys; and

WHEREAS, the Planning Commission was concerned that it would be possible to enclose those open spaces and transfer the existing area to another property free from the burden of receiving the required NROGO allocation; and

WHEREAS, non-residential development by certain not-for-profit organizations is exempt from the NROGO allocation system; and

WHEREAS, this amendment proposes that the exemption should not be applicable to non-residential development within designated Conservation and Natural Areas; and

WHEREAS, the change to the rates of the Employee Housing Fair Share Impact Fee (Sec. 9.5-124.9) was approved previously by the BOCC but not included in the final draft and this amendment will correct that error; and

WHEREAS, staff finds that there is a need to make the changes in order to provide clear definitions, avoid confusion, and provide applicants with a clearer understanding of the NROGO Ordinance; and

WHEREAS, staff finds that the proposed change is consistent with Section 9.5-511(d)(5) b. (iv) New Issues and (V) Recognition of a need for additional detail or comprehensiveness; and

WHEREAS, staff finds that the proposed change is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan; and

WHEREAS, this proposed amendment was reviewed at the Development Review Committee public meeting of October 2, 2003.

NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT REVIEW COMMITTEE OF MONROE COUNTY, FLORIDA, that the preceding findings of fact support their decision to recommend **APPROVAL** to the Monroe County Planning Commission of the following amendments to the text of the Monroe County Land Development Regulations as requested by the Monroe County Planning Department:

PROPOSED TEXT:

Sec. 9.5-124. Non-Residential rate of growth ordinance (NROGO)

(b) Definitions:

Covered walkways means a covered area of any length but no wider than five (5) feet that is used for providing weather protected pedestrian access from one part of a property to another part of the same property.

Sec. 9.5-124.2. Type of development affected.

(d) Enclosing of any canopies or drive-throughs in existence on or before September 19, 2001, the date of the adoption of NROGO Ordinance NO. 032-2001, shall require an NROGO allocation.

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for-profit exemption is not applicable to non-residential development proposed within designated Conservation and Natural Areas.

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(c) *Establishment of Fee Schedule:* An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

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of 2,000 to 2,999 square feet* \$2.00 per square foot

Structures for non-residential uses of 3,000 square feet or greater* \$3.00 per square foot

*The fee is calculated on the total new or transferred non-residential floor area subject to f. above.

Strike-through text is deleted

Underlined text is added

PASSED AND ADOPTED By the Development Review Committee of Monroe County, Florida at a regular meeting held on the 2nd day of October, 2003.

Fred Gross, Director, Lower Keys Planning Team (Chair)	<u>YES</u>
Ralph Gouldy, Environmental Resources Senior Administrator	<u>YES</u>
Department of Health (by fax)	<u>YES</u>
Department of Public Works (by fax)	<u>YES</u>
Department of Engineering (by fax)	<u>YES</u>

DEVELOPMENT REVIEW COMMITTEE OF MONROE COUNTY, FLORIDA

By _____
Fred Gross, DCR Chair

Signed this 2nd day of October, 2003